

REMARKS

I. INTRODUCTION

Currently claims 1-30 are pending. Claims 1-30 have been rejected.

Claims 1-11, 14-16, 21, and 24-26 have been amended to clarify that the pasta product of the present invention is fully hydrated and does not require rehydration before consumption. Support for this amendment may be found in the specification at page 5, lines 20-21 and page 8, lines 4-5.

II. CLAIMS

Claims 1-30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bajracharya et al. (U.S. Patent No. 6,001,405) in view of Taylor (U.S. Patent No. 4,597,972) and Nauth et al. (U.S. Patent No. 6,110,509).

Independent Claim 1, as amended, recites a "fully cooked, fully hydrated, stabilized pasta composition comprising ... wherein the fully cooked, fully hydrated, stabilized pasta composition is of the warm and serve variety which does not require rehydration before consumption. " Independent Claim 11, as amended, recites a "method of making a fully cooked, fully hydrated, stabilized pasta composition, ... wherein the fully cooked, fully hydrated, stabilized pasta composition is of the warm and serve variety which does not require rehydration before consumption." Independent Claim 21, as amended, recites a "method of inhibiting the growth of pathogenic microorganisms in a fully cooked, fully hydrated, stabilized pasta composition, ... wherein the fully cooked, fully hydrated, stabilized pasta composition is of the warm and serve variety which does not require rehydration before consumption." Bajracharya, either alone or in combination with Taylor and Nauth, does not disclose this feature of these independent claims, nor does it make this feature obvious to one skilled in the art. Instead, Bajracharya discloses a partially dried pasta that requires rehydration prior to consumption by the consumer.

More specifically, Bajracharya discloses a pasta which "is not a 'ready to eat' pasta but it requires a short period of cooking and rehydration for consumption" (see Bajracharya, column 1, lines 42-44). Bajracharya specifically discloses that partial drying is necessary to obtain the desired shelf life (see Bajracharya, column 3, lines 21-26). As such, the pasta of Bajracharya is not fully hydrated and must be rehydrated through the addition of water to and heating or boiling of the pasta before the pasta may be eaten by the consumer. Prior to rehydration, the partially dried pasta would not have desirable "mouth-feel" or organoleptic qualities, as the pasta would be tougher and more "rubbery" than fully hydrated pasta. Thus, the boiling of the Bajracharya pasta is done to rehydrate the pasta prior to consumption. Additionally, the required rehydration step of Bajracharya prevents the disclosed pasta from being packaged with pasta sauce, as the addition of water and the boiling step would dilute or otherwise disrupt the pasta sauce prior to consumption. Therefore, if the consumer of the Bajracharya pasta wishes to eat the pasta with pasta sauce, the pasta sauce must be prepared separately and added to the pasta after the pasta has been rehydrated.

In contrast, the present invention produces a fully hydrated pasta product which is immediately edible to the consumer, straight out of the package. The pasta of the present invention does not have to be dried during production, saving processing time and costs associated therewith. Thus, the pasta product of the present invention attains the disclosed shelf life without partial drying or any other drying step during processing. Since the present pasta is fully hydrated, the consumer may eat the pasta after merely warming the pasta to the desired temperature--no rehydration is required and no water must be added to the pasta product prior to consumption.

The Examiner seems misunderstand Applicants' specification at page 18, lines 9-10, which is cited in reference the rehydration step of Bajracharya. The purpose of the boiling water bath referred to at page 18, lines 9-10, is merely to warm the pasta and such warming is done without removing the pasta from the sealed pouch. In particular,

if the pasta product contains pasta sauce, mixing the pasta product itself into the boiling water bath, without being surrounded by the pouch, would unacceptably dilute the pasta sauce and result in an pasta product which was inedible, or at least one that did not taste very good, and this would defeat the purpose of the present invention. Applicants merely refer to warming the pasta in the boiling water bath as an alternative to warming the pasta product in a microwave oven. In fact, if the consumer wished, he or she could eat the pasta product of the present invention "cold," straight out of the refrigerator and without warming, because the pasta product of the present invention is fully hydrated and ready to eat. Additionally, since the pasta product of the present invention is fully hydrated, the pasta product may be packaged along with any desired pasta sauce, thus eliminating the need to separately prepare the pasta sauce and then add the sauce to the pasta after it has been rehydrated (as in Bajracharya).

As such, even if Taylor or Nauth would have made it obvious to one skilled in the art to add nisin or a nisin-containing whey to the pasta of Bajracharya, which Applicants' respectfully submit they do not (as neither Taylor nor Nauth contain or provide any suggestion or motivation for doing so), the resulting combination would not have resulted in a "fully cooked, fully hydrated, stabilized pasta composition" as claimed in the present invention. Rather, the combination would have yielded a partially dried product similar to the Bajracharya pasta which, in sharp contrast to the present invention, would require rehydration prior to consumption by the consumer. Therefore, the combination of the Bajracharya, Taylor, and Nauth references would not have made the "fully cooked, fully hydrated, stabilized pasta composition" as claimed in the present invention obvious to one skilled in the art.

Based on the foregoing, Applicants respectfully submit that Independent Claims 1, 11, and 21 are in condition for allowance.

Claims 2-10 have been amended to recite that the pasta is fully hydrated and does not require rehydration prior to eating. Claims 2-10 also depend from Claim 1.

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Thus, Applicants respectfully submit that Claims 2-10 are also in condition for allowance.

Claims 14-16 have also been amended to recite that the pasta is fully hydrated and does not require rehydration prior to eating. Claims 12-20 depend from Claim 11. Thus, Applicants respectfully submit that Claims 12-20 are also in condition for allowance.

Claims 24-26 have also been amended to recite that the pasta is fully hydrated and does not require rehydration prior to eating. Claims 22-30 depend from Claim 21. Thus, Applicants respectfully submit that Claims 22-30 are also in condition for allowance.

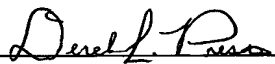
III. CONCLUSION

Based on the foregoing remarks and amendments, Applicants respectfully submit that this application is in condition for allowance.

If the Examiner believes that a telephonic or personal interview would be helpful to terminate any issues which may remain in the prosecution of the Application, the Examiner is requested to telephone the Applicants' attorney at the telephone number set forth herein below. The Commissioner is hereby authorized to charge any additional fees which may be required in the Application to Deposit Account No. 06-1135.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

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